IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED :17.12.2007
CORAM
THE HONOURABLE MR.JUSTICE S.MANIKUMAR
W.P.No.3928 of2003
S.Balaji Krishnakumar ... Petitioner
vs.
1. The Regional Transport Authority, Pollachi at Coimbatore.
2 The State Transport Appellate Tribunal,
High Court Complex, Chennai-104. ... Respondents
Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the order of the second respondent made in Appeal No.633 of 2002, dated 03.10.2002 and quash the same.
For Petitioner : Mr.K.Hariharan
For Respondents : Mr.A.Arumugam
Addl. Govt. Pleader
ORDER
The petitioner has sought a Writ of Certiorari to quash the order of the State Transport Appellate Tribunal, second respondent herein made in Appeal No.633 of 2002, dated 03.10.2002 and for further orders.

2. Brief facts leading to the Writ Petition are as follows:
The petitioner is a stage carriage operator, operating a bus bearing Registration No.TN-41/L-0700 on the route Pollachi to Karattumadam and holding a valid permit issued by the Regional Transport Authority, Pollachi at Coimbatore, first respondent herein. Petitioner's vehicle was checked by the Motor Vehicle Inspector Grade-I, on 27.07.2001 at Udukkampalayam and a check report was issued to the effect that the vehicle did not ply on the entirety of the route and that the original records of the vehicle were not available at the time of check. Based on the report, the first respondent issued a charge memo to the petitioner, for which, he submitted a detailed explanation, stating that at the time of check, his vehicle was stationed due to break down at Udukkampalayam and after rectifying the repairs, the vehicle was plied upto the destination, Karattumadam. Not satisfied with the explanation, the first respondent has suspended the permit on 30.04.2002 for a period of 5 days, with option to compound Rs.1,500/-. Aggrieved by the Order of suspension of permit, the petitioner preferred an Appeal No.633 of 2002 before the State Transport Appellate Tribunal, second respondent herein and by order dated 03.10.2002, the appeal was dismissed. Assailing the orders of the respondents, the petitioner has preferred the present Writ Petition.
3. Mr.K.Hariharan, learned counsel for the petitioner submitted that both the respondents have failed to consider the explanation offered by the petitioner in proper prospective and have erroneously suspended the permit of the stage carriage. He further submitted that the vehicle was stationed due to breakdown at Udukkampalayam and therefore, it could not ply on the entirety of the route. He further submitted that though the president of Pankamuthur Panchayat has given a representation to the first respondent, stating that petitioner's vehicle has been regularly covering the entire route and the Village Administrative Officer has also certified to that effect, the respondents have failed to consider the certificate and mechanically ordered for suspension of permit. He also submitted that the appellate authority has failed to advert to the contentions of the petitioner that the original order was passed by an incompetent authority.

4. Placing reliance on the decision in Swami Motor Transport (Pvt.) Ltd., reported in 1963 (1) MLJ (SN) 37, learned counsel for the petitioner submitted that mere signing of the crew In the check report would not amount to admitting the offence and It is only a token of acceptance of the factum of inspection. Finally, he submitted that as the history sheet of the petitioner Is clean, the appellate

authority could have taken a lenient view and warned him instead of imposing the penalty of suspension of permit for 5 days with option to compound Rs.1,500/-.

5. Mr.A.Arumugam, learned Additional Government Pleader, submitted that petitioner's vehicle was checked on 27.07.2001 by the Motor Vehicles Inspector, Grade I, certain Irregularities were found and after giving sufficient opportunity to the petitioner to submit his explanation, detailed orders were passed by the first respondent. He further submitted that the appellate authority has considered all the grounds raised in the appeal and confirmed the specific findings rendered by the original authority. As both the authorities, on examination of the materials placed before them, have categorically found that the petitioner had violated the permit conditions and contravened the provisions of the Motor Vehicles Act, suspension of permit is called for and in the absence of any procedural violation, the penalty imposed by the respondents cannot be said to be illegal.

Heard the counsel appearing for the parties and perused the material available on record.
6. Perusal of the order of the State Transport Appellate Tribunal, Pollachai at Coimbatore, dated 03.10.2002, reveals that the stage carriage bearing Registration No.TN 41/L 0700 belonging to the petitioner was checked by the Motor Vehicles Inspector Grade I, Pollachi on 27.07.2001 and he noticed following irregularities,
"(1)The vehicle was permitted to ply from Pollachi to Karattumadam (via) Udukkampalayam. But the vehicle was found plying from Pollachi upto Udukkampalayam only and not upto Karattumadam.
(2)Insurance Certificate expired on 16.05.2001 and no evidence for renewal.
(3)Conductor licence was not available for check."
7. The order of the first respondent further reads that on the basis of the check report, a charge memo was issued to the petitioner, calling upon him to explain the irregularities noticed above. As the explanation offered by the petitioner was not satisfactory, the Regional Transport Authority, suspended the permit for a period of 5 days with option to compound Rs.1,500/- in lieu of suspension at the rate of Rs.300/- per day. The appellate authority, while considering the explanation of the petitioner that the bus was plying upto Karattumadam in all singles, considered the remarks of the Checking Officer, wherein, he has stated that on the date of check, the vehicle did not ply upto Karattumadam, the Insurance had already expired on 16.05.2001 and there was no evidence for renewal of the same.
8. While confirming the order of penalty, the appellate authority has observed that the driver as well as conductor of the stage carriage have signed the check report and there was no reason to reject or disbelieve the version of the checking officer. If the petitioner had operated the vehicle upto Karattumadam as claimed by him, nothing prevented his driver or the conductor from making any objection in the check report itself. Further if the petitioner was really aggrieved by any false entry made in the check report, he could have taken up this matter with the higher authorities on the same day or immediately thereafter. Obviously, the petitioner has not made any complaint or representation against the Motor Vehicles Inspector Grade I, who had conducted the check.

9. Where a person, having a valid permit, was found to have operated the vehicle contrary to the conditions of the permit, Section 86 of the Motor Vehicles Act, 1939, is attracted for cancellation or suspension of permit. What is contemplated under Sub-Section (1) of Section 86 is that before cancellation of suspension, the holder of the permit should be given an opportunity to submit his explanation. This Court in Dhanmull v. R.T.Authority reported in AIR 1959 Mad. 531, dealt with a question, as to whether Section 86 of the Motor Vehicles Act, 1939, contemplates examination of any witness before suspending the permit and at Paragraphs 7 to 10, held as follows:
"7. The authorities proceeded against the petitioner for contravention of clause (b) of Section 60(1) of the Motor Vehicles Act. Sub-section (1) of section 60 enumerates six categories of matters and provides that, should a contravention occur in respect of any of these, the permit may be cancelled on suspended for such period as the appropriate authority deems fit. There is a proviso to this which

runs :
"Provided that no permit shall be cancelled, unless an opportunity has been given to the holder of the permit to furnish his explanation."
It will be noticed that this section does not require that the authorities concerned should record any evidence. Therefore, it is not possible to say that, when the Secretary of the Regional Transport Authority declined to record the evidence of the constable whom the petitioner referred to, he contravened any provision of the statute. The next thing to remember is that the authorities referred to in this sub-section have not been given power to summon witnesses or to enforce their attendance. The omission in the statute in this respect suggests that it was not the intention of the legislature that the authorities in question should examine any witnesses. It may also be mentioned that the petitioner did not offer to produce the constable before the Secretary, Regional Transport Authority, for his examination.
8. Another circumstance may be mentioned here. All that the proviso to sub-s. (1) of Section 60 requires is that, before a permit is cancelled, the holder of the permit should be given an opportunity to furnish his explanation. The suspension of a permit is a less serious penalty than its cancellation. Even as regards cancellation, all that the statute requires is that: the operator should be given an opportunity to furnish his explanation. It seems to stand to reason that in respect of the lesser penalty the statute could not have required that a more elaborate procedure should be followed.
9. When we examine the scheme of the Act, it will be found that contraventions of its provisions and of the rules made thereunder are placed in two categories. In one category is placed those contraventions, for which the offender may be prosecuted and punished in the ordinary criminal courts. Such matters are provided for in Chapter 9 of the Act. In respect of other contraventions what I may call departmental action ts provided for. This is a very summary method, and ail that the authorities concerned are required to do is to give the person proceeded against an opportunity to furnish his explanation. It follows that all that he required is that the person proceeded against should be notified what the allegations against him are and that he should be given an opportunity to explain them.
10. The further comment I would make is that the right of the petitioner to ply a stage carriage vehicle is derived under the Act. The extent of that right and the circumstances under which that right is liable to be curtailed, abridged or withdrawn are all provided for in the Act and the rules framed thereunder. And so long as these have been complied with the petitioner cannot properly complain. Rut this does not mean that the proper authorities are precluded from examining the witnesses and in a proper case they would be exercising a wise discretion if they do examine witnesses produced by a party. All that I would say at this stage is that, under the statute, a person placed in the position of the petitioner has no right to insist that his witnesses should be examined when he is being proceeded against for a transgression of any of tile matters enumerated in Sub-section (1) of Section 60."

In the above reported judgment, this Court has further held that in matters relating to suspension of permit, being a less serious penalty, for contravention of certain provisions, the procedure to be followed by the authorities is purely summary and it is suffice that the holder of the permit is given an opportunity to explain the allegations.

10. For the first time before the original authority, the petitioner has raised a new plea that on the date of check, the vehicle was stationed due to break down and he could not operate the vehicle upto Karattumadam. The order dated 30.04.2002 contains the name of the Regional Transport Authority and the copy of the said order has been seen to the petitioner and therefore, the contention of the petitioner that the said order has been passed by an incompetent authority, cannot be countenanced. The Regional Transport Authority is a quasi-judicial authority, the procedure being summary in nature, examination of witnesses is not essential before suspending the permit. As the authorities have categorically found that there was no evidence for renewal of Insurance Certificate

at the time of check by the Motor vehicle Inspector, the contention that he had valid insurance certificate for the vehicle is not acceptable. It is the obligation of the stage carriage operator to produce necessary documents such as permit, Insurance Certificate, Tax Token and such other documents at the time of check and if the required certificate or document is not produced at the at the time of check, the competent authority can take appropriate action. Whether the petitioner has been regularly operating his vehicle and that he was in possession of the above said documents at the time of check, are questions of fact and this Court would not convert itself into a Court of appeal and adjudicate upon the same. For the above said reasons, the findings cannot be termed as perverse. There is no procedural violation a alleged and therefore, I see no reason to Interfere with the order of the respondents.

S. MANIKUMAR, J.
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11. In the result, the Writ Petition is dismissed. No costs.

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